

NOT FOR PUBLICATION

JAN 24 2008

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRED SWANIGAN,

Petitioner - Appellant,

v.

MARGARITA PEREZ, Chairwoman,
Board of Prison Terms for California; et
al.,

Respondents - Appellees.

No. 06-55202

D.C. No. CV-04-09291-DOC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN and PAEZ, Circuit Judges.

California state prisoner Fred Swanigan appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 2253. We review de novo a district court's decision to deny a § 2254 petition, *McQuillion v. Duncan*, 306 F.3d 895, 899 (9th Cir. 2002), and we affirm.

Appellees contend that we lack jurisdiction because there is no federally protected interest in parole release in California, and thus, Swanigan has failed to state a federal claim. As appellees acknowledge, this contention is foreclosed. *See Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123, 1127-28 (9th Cir. 2006).

Swanigan contends that the California Board of Prison Terms' (the "Board") 2003 decision to deny him parole violated his due process rights. We disagree. We conclude that there was no due process violation because some evidence supports the Board's decision. *See Superintendent v. Hill*, 472 U.S. 445, 454-56 (1985); *Irons v. Carey*, 505 F.3d 846, 851-52 (9th Cir. 2007); *Sass*, 461 F.3d at 1128-29. Accordingly, Swanigan has failed to demonstrate that the state court's decision denying this claim "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," or "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." *See* 28 U.S.C. § 2254(d); *see also Hill*, 472 U.S. at 454-56.

AFFIRMED.